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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,027	05/06/2005	Estanislao Martinez Gomez	Q-87652	3379
23373 7590 02/17/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
WALKER, NED ANDREW				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
02/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/534,027

**Applicant(s)**

MARTINEZ GOMEZ, ESTANISLAO

**Examiner**

NED A. WALKER

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 03 November 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

1. The drawings were received on December 3<sup>rd</sup>, 2008. These drawings are acceptable.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-3, 5, and 7-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Saunders (US Pat. No. 3,768,692).**

Saunders discloses an easy-open lid (FIG. 3) for a container comprising: any one of a circular, elliptical or rectangular shape with rounded vertices (FIG.3), a cut line (29, 30, 31, 32), parallel and close to a perimeter of the lid for opening the lid with a punch-tear away ring tab (34) attached to the body of the lid by a rivet (39) and which is provided with a punching vertex (35) acting on the cut line, wherein before the tab is lifted the cut line is provided with a curved breakage segment (29) having a curvature center (center of 39), wherein the rivet for attaching the ring tab to the body of the lid is the curvature center of the breakage segment (center of 39 as shown in FIGS. 3-4), such that the punching vertex is kept in place on the breakage segment after an accidental rotation of the ring tab within the curve of the breakage segment during the

process of handling the lid itself and the container to which it is associated (FIG. 3); wherein the amplitude of the curved breakage segment of the cut line ranges between 1 degree and 80 degrees (FIGS 1-5, column 2 lines 55-65); wherein the curved breakage segment on the cut line is symmetrical with regard to an imaginary axis formed by a theoretical actuation point of the punch vertex of the ring tab, coinciding with the mid-point of the breakage segment, and the rivet for attaching the ring tab (FIGS. 3-4); wherein the curved breakage segment of the cut line, with a curvature center on the rivet, is joined to the rest of the cut line by means of double, curved and counteropposing inflections (30, 31) for facilitating the opening of the lid along said line (FIG. 3); wherein the curved breakage segment is defined by a variation in the curvature of the cut line (FIGS. 3-4); the variation comprises a pair of offsetting, curved inflections on either side of the curved breakage segment (FIGS. 3-4); wherein the contour of the punching vertex matches the contour of the curved breakage segment (FIG. 3).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**6. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being obvious over Saunders (US Pat. No. 3,768,692).**

7. Saunders discloses substantially all the limitations of the claims except wherein the amplitude of the curved breakage segment of the cut line is 20 degrees, further comprising 10 degrees on each side of the theoretical actuation point of the punch vertex of the ring tab, coinciding with the mid-point of the breakage segment, and the rivet for attaching the ring tab.

It would have been an obvious matter of design choice to one having ordinary skill in the art at the time the invention was made to select a certain amplitude deemed optimal, since applicant has not disclosed that this particular amplitude solves any stated problem or is for any particular purpose and it appears that the invention would perform equally as well with a different amplitude; furthermore it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

#### ***Response to Arguments***

8. The examiner acknowledges the amendment to claims 1, 8, and 19, as filed on January 5<sup>th</sup>, 2009.
9. Applicant's arguments, see amendment filed January 5<sup>th</sup>, 2009, with respect to the rejection of claims 1-3, 5, and 7-20 under 35 USC §102(b)/§103(a) as being

anticipated/obvious by Hanafusa et al. have been fully considered and are persuasive in view of the amendment to the claims. Therefore, the rejection has been withdrawn; however, upon further consideration, new grounds for rejection have been made under 35 U.S.C. §102(b)/§103(a) as being anticipated/obvious by Saunders.

The new grounds for rejection have rendered the remainder of the applicant's arguments regarding the aforementioned §102(b) rejection moot.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NED A. WALKER whose telephone number is (571)270-3545. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NW

/Anthony D Stashick/  
Anthony D Stashick  
Supervisory Patent Examiner, Art Unit 3781